

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA

RECEIVED AND FILED

2007 DEC 13 A 10:49

In re:

USA COMMERCIAL MORTGAGE COMPANY,  
USA CAPITAL REALTY ADVISORS, LLC,  
USA CAPTIAL DIVERSIFIED TRUST DEED FUND,  
LLC,  
USA CAPITAL FIRST TRUST DEED FUND, LLC,  
USA SECURITIES, LLC,

U.S. BANKRUPTCY COURT  
MAGNA COUNTY, CLERK  
Case No. BK-S-06-10725-LBR  
Case No. BK-S-06-10726-LBR  
Case No. BK-S-06-10727-LBR  
Case No. BK-S-06-10728-LBR  
Case No. BK-S-06-10729-LBR

Debtors.

CHAPTER 11

Jointly Administered Under Case No.  
BK-S-06-10725-LBR

---

**CREDITORS, BARRY J. GOLDSTEIN AND PATRICIA GOLDSTEIN, AND  
CAPITAL MORTGAGE INVESTORS, INC.'S RESPONSE IN OPPOSITION TO OBJECTIONS  
OF USACM LIQUIDATING TRUST TO PROOFS OF CLAIM**

Creditors, Barry J. Goldstein and Patricia Goldstein ("Goldstein") and Capital Mortgage Investors, Inc. ("Capital Mortgage"), by and through undersigned counsel, hereby file their Response in Opposition to the Objections of USACM Liquidating Trust to Proofs of Claim, and state:

1. On November 10, 2006, Goldstein filed two proofs of claim: a claim in an amount not stated (Claim No. 10725-01167) and a claim in the amount of \$14,699.00 (Claim No. 10725-01165).
2. On November 10, 2006, Capital Mortgage filed two proofs of claim: a claim in an amount not stated (Claim No. 10725-01163) and a claim in the amount of \$12,951.80 (Claim No. 10725-01168).
3. As set forth in the USACM Liquidating Trust's (the "Trust") Fifth and Sixth Omnibus Objection to Claims for Lack of Documentation, the Trust objected to each of the four claims.
4. With regard to Goldstein and Capital Mortgage's claims in amounts not stated, Goldstein invested the approximate sum of \$600,000.00 and Capital Mortgage the sum of

Jointly Administered Under  
Case No. BK-S-06-10725-LBR  
Chapter 11

\$150,000.00 in various mortgage loan projects of the Debtors that remain in default. Neither Goldstein nor Capital Mortgage have received any return or repayment on their investment and, therefore, filed claims in unliquidated amounts with regard to their respective investments. Both Goldstein and Capital Mortgage remain in the process of obtaining documents evidencing their respective investments and will furnish same to the Trust immediately upon location and receipt.

5. With regard to the liquidated claim amounts, Goldstein and Capital Mortgage each invested the sum of \$50,000.00 in the Debtors' Bay Pompano Beach mortgage loan transaction. From the principal loan payments remitted to the Debtors by the borrower in the Bay Pompano Beach transaction, the Debtors used funds invested by Goldstein (\$14,699.00) and Capital Mortgage (\$12,951.80) to pay other investors on other defaulted loan projects. Therefore, these liquidated sums remain due and owing Goldstein and Capital Mortgage under the Bay Pompano Beach loan transaction.

6. Attached hereto as Exhibit "A" is Capital Mortgage's Investor History Report, which evidences the amount of principal paid by the borrower (column B) and the amount paid to the investor (column C). The difference (\$12,286.78) was the amount diverted by the Debtors to other investors. Capital Mortgage and Goldstein remain in the process of obtaining additional documents evidencing the investment in the Bay Pompano Beach transaction and will furnish same to the Trust immediately upon location and receipt.

7. Based upon the above, Goldstein and Capital Mortgage request that the Court overrule the Trust's objections to claims and allow the unsecured claims as filed.

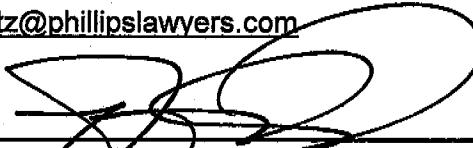
WHEREFORE, Goldstein and Capital Mortgage respectfully request that this Court overrule the objection to claims of the USACM Liquidating Trust, and for any further relief as this Court deems just and proper.

Jointly Administered Under  
Case No. BK-S-06-10725-LBR  
Chapter 11

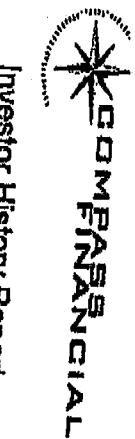
**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 12<sup>th</sup> day of December, 2007, the foregoing document is being served on Susan M. Freeman, Esq., Rob Charles, Esq., and John C. Hinderaker, Esq., Lewis and Roca LLP, 3993 Howard Hughes Parkway, Suite 600, Las Vegas, NV 89169-5996.

PHILLIPS, CANTOR & BERLOWITZ, P.A.  
Attorneys for Goldstein and Capital Mortgage  
4000 Hollywood Blvd., Suite 375-South  
Hollywood, FL 33021  
Tel No. 954-966-1820/Fax No. 954-966-2446  
[jberlowitz@phillipslawyers.com](mailto:jberlowitz@phillipslawyers.com)

BY: 

JEFFREY S. BERLOWITZ, ESQUIRE  
FBN: 903739



## Investor History Report

Vesting: Capital Mortgage Investors, Inc., a Florida Corporation

Loan: Bay Pompano Beach

Client ID: 6708

Account ID: 6785

Loan Interest Rate: 13.00%

Current Service Fee: 3.00%

A	B	C	D = B - C	E	F	G	H = E - F - G	I	J = G - I
Date	Transaction			Principal Paid by Borrower	Principal Paid to Investor	Principal Owed to Investor	Interest Earned	Loan Service Fee Retained by CFP	Interest Paid from Borrower Net of Service Fee
04/01/2007 - PRIOR MONTH ENDING BALANCES				\$22,942.05	\$27,057.95	\$14,771.98	\$7,236.98	\$659.57	\$4,536.93
04/30/2007 Interest and Service Fee (41 - 430)				\$22,942.05			\$274.30	\$57.36	\$2,077.32
<b>TOTALS:</b>				<b>\$22,942.05</b>	<b>\$27,057.95</b>	<b>\$14,771.98</b>	<b>\$0.00</b>	<b>\$7,331.17</b>	<b>\$4,536.93</b>

This rate has been adjusted according to your loan servicing agreement.

This statement is provided for informational purposes only and is intended for the sole benefit of the named vested party.

This statement is not intended to represent a loan payoff quote. Compass Financial Partners, LLC ("CFP") reserves the right to update and supplement this statement.

EXHIBIT

"A"